

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

August 23, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-2290

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

In re the Marriage of:

LYNN G. JOCHEM,

Petitioner-Respondent,

v.

JEROME F. JOCHEM,

Respondent-Appellant.

APPEAL from a judgment of the circuit court for Washington County: JAMES B. SCHWALBACH, Judge. *Affirmed.*

Before Anderson, P.J., Brown and Snyder, JJ.

PER CURIAM. Jerome F. Jochem appeals from a judgment of divorce from Lynn G. Jochem. He challenges the property division and the award of \$900 per month indefinite maintenance to Lynn. We conclude that the trial court properly exercised its discretion and we affirm the judgment.

We first address the maintenance award. The determination of the amount and duration of maintenance rests within the sound discretion of the trial court and will not be upset absent a misuse of discretion. *Wikel v. Wikel*, 168 Wis.2d 278, 282, 483 N.W.2d 292, 293 (Ct. App. 1992). Discretion is properly exercised when the court arrives at a reasoned and reasonable decision through a rational mental process by which the facts of record and the law relied upon are stated and considered together. *Id.*

Jerome argues that the trial court failed to consider Lynn's earning capacity and include income she could earn through a second job as a licensed real estate sales agent. The claim is without merit in light of the trial court's statement that it did consider Lynn's previous parttime supplemental employment as a realtor. The trial court found that a real estate career is not compatible with Lynn's present employment, employment which notably pays her more than one would reasonably expect she could earn given her lack of professional training.

The finding of job incompatibility disposes of Jerome's argument that because he would not be allowed to quit one of his jobs, Lynn should not be allowed to give up her supplemental earnings as a realtor. The trial court implicitly approved of Lynn's career choice and was not required to make her work two jobs. In light of the employee benefits of Lynn's job, there is no basis for a contention that Lynn was deliberately shirking her responsibility to be fully employed. Further, Jerome's termination of his civil service job or membership in the Wisconsin National Guard, two jobs which must be maintained together, was not before the trial court. We reject Jerome's attempt to argue on such speculation.

Jerome claims that the award of indefinite maintenance is unfair because it does not provide Lynn with an incentive to become self-supporting. He also contends that the trial court failed to address the support and fairness objectives of maintenance. The support objective ensures that the payee spouse is supported in accordance with the needs and earning capacities of the parties, and the fairness objective ensures a fair and equitable financial arrangement between the parties in the individual case. *LaRocque v. LaRocque*, 139 Wis.2d 23, 33, 406 N.W.2d 736, 740 (1987).

We reject Jerome's suggestion that the trial court was required to consider and discuss each of the factors in § 767.26, STATS. The trial court need not consider all of the factors but only those that are relevant. *Poindexter v. Poindexter*, 142 Wis.2d 517, 532, 419 N.W.2d 223, 229 (1988). The weight to be given to each of the factors in § 767.26 is within the discretion of the circuit court. Cf. *Herlitzke v. Herlitzke*, 102 Wis.2d 490, 495, 307 N.W.2d 307, 310 (Ct. App. 1981) (it is for the trial court to determine the weight and effect of the factors under § 767.255, STATS.). See also *Trattles v. Trattles*, 126 Wis.2d 219, 229, 376 N.W.2d 379, 384 (Ct. App. 1985) (*Herlitzke* rationale extended to trial court's consideration of factors in § 767.26 for determining maintenance).

The trial court's primary consideration was the length of the marriage—twenty-two years. The court concluded that in order to have each party maintain the marital standard of living, an equalization of income was necessary. This was an entirely appropriate approach. See *Wikel*, 168 Wis.2d at 282, 483 N.W.2d at 293 (when a couple has been married many years and achieves increased earnings, an equal division of total income is a reasonable starting point in determining maintenance). The court also considered that Jerome was able to complete a college degree, while Lynn was primarily responsible for taking care of the family even when she was employed outside the home on a parttime basis. We conclude that the trial court properly exercised its discretion in determining the amount and indefinite duration of maintenance.

Jerome's final claim with respect to maintenance is that the trial court failed to consider his obligation to support a nonmarital child. He contends that the trial court should have reduced his available income by seventeen percent, the amount of child support due under applicable guidelines. However, there is no court order for child support for the nonmarital child. Jerome cannot claim the benefit of the child support guideline when there is no order or payments being made under that provision. Jerome has custody of the child and his support obligation is subsumed in his living expenses. Even though the child may not reside with Jerome, there is no evidence of voluntary payments made as child support. Further, even if Jerome pays child support for the nonmarital child, the trial court was not required to reduce the combined marital income by such amounts. To do so would make Lynn bear the consequences of Jerome's individual assumption of parenthood.

We turn to the trial court's fifty-fifty division of property. Jerome claims that because the trial court failed to adequately investigate the value of the parties' joint Federated Account, the property division constitutes an erroneous exercise of discretion. The trial court adopted Lynn's valuation of the account, an amount in excess of what actually was in the account on the date of the divorce. The account was awarded to Jerome.

The valuation of a particular marital asset is a finding of fact which we will not upset unless clearly erroneous. *Liddle v. Liddle*, 140 Wis.2d 132, 136, 410 N.W.2d 196, 198 (Ct. App. 1987). The appropriate valuation methodology is committed to the trial court's discretion. *Sharon v. Sharon*, 178 Wis.2d 481, 489, 504 N.W.2d 415, 419 (Ct. App. 1993). Thus, we determine if the trial court examined the relevant facts and demonstrated a rational process to reach a reasonable conclusion. *Id.*

The temporary order entered by the family court commissioner froze all assets and provided that certain expenditures could be made out of the Federated Account. The trial court found that Jerome acted contrary to the temporary order by making use of the account through deposits and withdrawals. Although Jerome offered an accounting of his use of the account, the trial court rejected it as incomprehensible and incredible. Jerome did not corroborate his accounting with bank or payroll records. Thus, the trial court's valuation was based on a credibility determination that was for the trial court to make. See *Wiederholt v. Fischer*, 169 Wis.2d 524, 533, 485 N.W.2d 442, 445 (Ct. App. 1992). Additionally, it was appropriate for the trial court to make Jerome bear the risk of a failed accounting as a sanction for his unauthorized depletion of the account. We conclude there was no error in the trial court's valuation of the Federated Account.

Jerome's final claim pertains to his pensions. He argues that in awarding him his civilian and military pensions as part of the property division, Lynn is allowed a "double dip" into those assets because the indefinite maintenance will eventually be paid from those assets. We agree with the trial court's response to Jerome's claim. The issue is not presented by the facts before the trial court, but depends on future circumstances surrounding Jerome's retirement. Therefore, the issue can only be addressed in the context of a substantial change in circumstances claim.

Finally, Jerome contends that the trial court failed to consider that because a pension is not worth anything until Jerome retires, the award of both pensions to him was not equitable. This contention lacks merit. When a divorce is granted, the present value of a pension fund should usually be included in the marital estate for purposes of property division. *Pelot v. Pelot*, 116 Wis.2d 339, 343, 342 N.W.2d 64, 66 (Ct. App. 1983). The pensions here were discounted to present value to account for the very inequity that Jerome claims. The trial court's handling of the pensions was a proper exercise of discretion.

By the Court. — Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.